(27)

No. 05-254
Vide 04-10649, 05-204, 05-276, 05-298, 05-439, 05-460

Title: Travis County, Texas, et al., Appellants
v.
Rick Perry, Governor of Texas, et al.

Docketed: August 26, 2005
Lower Ct: United States District Court for the Eastern District of Texas
Case Nos.: (2:03-CV-354)
Decision Date: June 9, 2005
Questions Presented

| ~~Date~~ | ~~~~~~~Proceedings and Orders~~~~~~~

	VIDED. (Distributed)
Jan 10 2006	Brief amici curiae of Samuel Issacharoff, Burt Neuborne, and Richard H. Pildes filed. VIDED. (Distributed)
Jan 10 2006	Joint appendix filed. (Joint appendix in two volumes) VIDED. (Distributed)
Jan 10 2006	Brief amicus curiae of NAACP Legal Defense and Educational Fund, Inc. filed. VIDED. (Distributed)
Jan 17 2006	Motion for divided argument filed by appellants in Nos. 05-254, 05-276, and 05-439. VIDED. (Distributed)
Jan 17 2006	Motion for divided argument filed by appellants No. 05-204. VIDED. (Distributed)
Jan 20 2006	Application (05A663) to file respondents brief on the merits in excess of page limits, submitted to Justice Scalia.
Jan 23 2006	Supplemental letter of applicant received.
Jan 23 2006	Motion for divided argument filed by petitioners GRANTED. The time is to be divided as follows: 40 minutes for appellants in No. 05-276 and 20 minutes for appellants in No. 05-439.
Jan 23 2006	Motion for divided argument filed by appellants in No. 05-254 DENIED.
Jan 24 2006	Application (05A663) to file a consolidated appellees brief in excess of page limits granted by Justice Kennedy. The brief may not exceed 125 pages.
Jan 31 2006	Brief amici curiae of Ron Wilson filed. VIDED. (Distributed)
Feb 1 2006	Brief of appellees Tina Benkiser and John DeNoyelles filed. VIDED. (Distributed)
Feb 1 2006	Brief of appellees Rick Perry, Governor of Texas, et al. filed. VIDED. (Distributed)
Feb 1 2006	Brief amici curiae of Glenn Richardson, et al. filed. VIDED. (Distributed)
Feb 1 2006	Brief amici curiae of American Legislative Exchange Council and Free Enterprise Coalition filed. VIDED. (Distributed)
Feb 1 2006	Brief amici curiae of Alan Heslop, et al. filed. VIDED. (Distributed)
Feb 1 2006	Brief amici curiae of Republican National Committee filed. VIDED. (Distributed)
Feb 1 2006	Brief amici curiae of Robert C. Jubelirer filed. VIDED. (Distributed)
Feb 1 2006	Brief amici curiae of Utah, Nevada, and Ohio filed. VIDED. (Distributed)
Feb 1 2006	Brief amici curiae of Edward Blum and Roger Clegg filed. VIDED. (Distributed)
Feb 7 2006	Reply of appellee Frenchie Henderson in support of appellants filed. (Distributed)
Feb 7 2006	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed. VIDED.
Feb 17 2006	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Feb 22 2006	Motion DISTRIBUTED for Conference of March 17, 2006.
Feb 22 2006	Reply of appellants Travis County, Texas, et al., Appellants filed. (Distributed)
Mar 1 2006	Argued. For appellants in No. 05-276: Paul M. Smith, Washington, D.C. For appellants in No. 05-439: Nina Perales, San Antonio, Tex. For appellees: R. Ted Cruz, Solicitor General, Austin, Tex.; and Gregory G. Garre, Deputy Solicitor General, Department of Justice, Washington, D.C. (for United States, as amicus curiae.)

No. [illegible] 2005

In The

Supreme Court of the United States

TRAVIS COUNTY, TEXAS, GUSTAVO LUIS "GUS" GARCIA, and CITY OF AUSTIN, TEXAS,

Appellants,

v.

RICK PERRY, Governor of Texas, *et al.*,

Appellees.

On Appeal From The United States District Court For The Eastern District Of Texas

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Does the Texas legislature's 2003 replacement of a legally valid congressional districting plan with a statewide plan, enacted for "the single-minded purpose" of gaining partisan advantage, satisfy the stringent constitutional rule of equipopulous districts by relying on the 2000 decennial census and the fiction of inter-censal population accuracy?

LIST OF PARTIES

Plaintiffs and Plaintiff-Intervenors below:

Travis County, Texas; City of Austin, Texas; Gustavo Luis "Gus" Garcia; Eddie Jackson; Barbara Marshall; Gertrude "Traci" Fisher; Hargie Faye Jacob-Savoy; Ealy Boyd; J. B. Mayfield; Roy Stanley; Phyllis Cottle; Molly Woods; Brian Manley; Tommy Adkisson; Samuel T. Biscoe; David James Butts; Ronald Knowlton Davis; Dorothy Dean; Wilhelmina R. Delco; Samuel Garcia; Lester Gibson; Eunice June Mitchell Givens; Margaret J. Gomez; Mack Ray Hernandez; Art Murillo; Richard Raymond; Ernesto Silva; Louis Simms; Clint Smith; Connie Sonnen; Alfred Thomas Stanley; Maria Lucina Ramirez Torres; Elisa Vasquez; Fernando Villareal; Willia Wooten; Ana Yañez-Correa; Mike Zuniga, Jr.; Frenchie Henderson; American GI Forum of Texas; Simon Balderas; Gilberto Torres; Eli Romero; League of United Latin American Voters District 7; League of United Latin American Voters; Webb County; Cameron County; Juanita Valdez-Cox; Leo Montalvo; William R. Leo; Coalition of Black Democrats; Texas NAACP; Lester Bellow; Homer Guillory; John Bland; Rev. Willie Davis; and Congressmembers Sheila Jackson Lee, Eddie Bernice Johnson, Chris Bell, Gene Green, and Nicholas Lampson

Defendants below:

State of Texas; Rick Perry, Governor of Texas; Geoffrey S. Connor, Secretary of State of Texas; David Dewhurst, Lieutenant Governor of Texas; Tom Craddick, Speaker of the Texas House of Representatives; Charles Soechting, Chair of the Texas Democratic Party; Tina Benkiser, Chair of the Texas Republican Party

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JURISDICTIONAL STATEMENT

Travis County, Gus Garcia, and the City of Austin (collectively, "Travis County appellants") urge the Court to take jurisdiction over this appeal and reverse the judgment below.

OPINIONS BELOW

The district court's unreported opinion, on remand from this Court, is reprinted as Appendix A at App. 1a-58a. The district court's pre-remand opinion is reported at 298 F.Supp.2d 451 (E.D. Tex. Jan. 6, 2004) and reprinted as Appendix B at App. 59a-214a.

JURISDICTION

Acting under 28 U.S.C. § 2284, the three-judge district court issued its opinion and judgment on remand on June 9, 2005, adhering to its earlier judgment and denying the injunction requested by the plaintiffs and plaintiff-intervenors. App. 42a, 230a. Travis County and the City of Austin filed their notice of appeal on June 25, 2005. App. 231a. Gus Garcia filed his notice of appeal on July 5, 2005. App. 233a-235a. The Court has jurisdiction under 28 U.S.C. § 1253.

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

Article I, section 2, clause 1, of the Constitution of the United States provides in relevant part:

> The House of Representatives shall be composed of Members chosen every second Year by the People of the several States . . .

Article I, section 2, clause 3, of the Constitution of the United States provides in relevant part:

> Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. . . .

Section 2 of the Fourteenth Amendment to the Constitution of the United States provides in relevant part:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. . . .

STATEMENT OF THE CASE

This appeal is from the district court decision on remand upholding the validity of the 2003 statewide Texas congressional redistricting plan – designated Plan 1374C – enacted in the third special session of the 78th Texas Legislature. 2003 Texas House Bill 3, 78th Leg., 3d C.S. (Oct. 12, 2003). The court's initial decision on the various challenges to the 2003 Plan inexplicably ignored the one

person, one vote issue urged by the Travis County appellants and other voters.[1] This Court, however, vacated the initial judgment and remanded the case for consideration in light of *Vieth v. Jubelirer*, 541 U.S. 267 (2004). *Travis County v. Perry*, 125 S.Ct. 352 (2004).

The district court did address the issue extensively on remand, dividing over it by a 2-1 vote. Two members of the court declined to adopt the argument. App. 33a-42a. The other member of the district court found the argument valid, concluding that the 2003 redistricting plan violates the one person, one vote requirement. App. 47a-56a.[2]

Redistricting in 2001

Federal reapportionment of congressional seats following the official 2000 census gave Texas two additional seats, bringing its total to thirty-two. *Perry v. Del*

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[1] Travis County and Austin raised the one person, one vote issue from the inception of the case. App. 5a, 33a-34a, 47a; *see* Joint Final Pretrial Order ¶ D.10(a). Gus Garcia, a citizen and registered voter residing in Austin in Travis County, as well as other voters spread across the state, also joined in the challenge. *Id.*, ¶ D.1(h) (adopting ¶ D.10(a)); Stip. E.23.

[2] This judge, however, specially concurred instead of dissenting because he concluded that the scope of this Court's remand did not extend to the impact of the post-*Vieth* summary affirmance in the one person, one vote case of *Cox v. Larios*, 124 S.Ct. 2806 (2004), and, hence, did not extend to the one person, one vote issue. App. 58a. The district court majority was uncertain whether the equal population issue was within the remand's scope. App. 41a-42a. Regardless of whether the remand for consideration of *Vieth*'s impact also embraced the impact of *Cox v. Larios*, the one person, one vote issue is properly before *this* Court. It has been an issue from the case's beginning, and the Travis County appellants' initial appeal, from the first district court decision in this matter, raised the equal population issue. In fact, it is the *only* issue raised by these appellants.

Rio, 66 S.W.3d 239, 244, 254 (Tex. 2001). By early spring of 2001, the state had sufficient block-level census data to redistrict Texas' then-malapportioned districts. *Del Rio*, 66 S.W.3d at 244, 254; Joint Pretrial Order Stip. E.82; App. 3a.

The Texas legislature, however, was unable to pass the necessary new congressional plan by the end of its regular session in late May of 2001. *Del Rio*, 66 S.W.3d at 246. The Governor ended any possibility of legislative action before the 2002 congressional elections on July 3, 2001, when he formally announced his decision not to call a special session on congressional redistricting. *Del Rio*, 66 S.W.3d at 243 & n.7.

Following state court proceedings that ended without a congressional plan, a three-judge federal court for the Eastern District of Texas, in *Balderas v. Texas*, stepped forward to perform the redistricting task to, among other things, "bring the district map into line with the equal population rule[.]" App. 83a. The *Balderas* decision and accompanying congressional map, designated Plan 1151C, issued in late 2001, and the plan was used for the 2002 congressional election cycle. Joint Final Pretrial Order Stips. E.2, E.70.[3] The state did not appeal but others did, and this Court summarily affirmed the decision and Plan 1151C's validity. *Balderas v. Texas*, 536 U.S. 919 (2002).

[3] The 2001 *Balderas* decision is Appendix C to this jurisdictional statement. App. 215a-229a. The district court consolidated the cases involved in the instant appeal with the *Balderas* cases.

Redistricting in 2003

The 2002 elections changed partisan control of the Texas legislature, but not the partisan balance of the Texas congressional delegation, where ticket-splitters maintained Democratic members in a tenuous majority. App. 89a. Early in the 2003 regular session, in response to a legislative request, the Texas Attorney General formally determined that state law did not mandate any legislative action on congressional redistricting and that the *Balderas* plan would remain effective for the remainder of the decade in the absence of state legislative action. Tex. Att'y. Gen. Op. GA-0063 (April 23, 2003).

The legislature moved forward with the task anyway. After failing to enact a new congressional redistricting plan in the regular session and two special sessions of the legislature, the new majority prevailed in a third called session.[4] Two years and seven months, and one full round of elections, after receiving census numbers sufficient for redistricting, the Texas legislature enacted Plan 1374C. As the district court determined in its initial decision, the "single-minded purpose" behind Plan 1374C was "to gain partisan advantage." App. 89a.

State's use of 2000 census despite evidence of significant change over three years

By its own admission, the state "did not make any effort to determine the current populations of the congressional

[4] The out-of-state flight of Democratic legislators in the Texas House and Senate to deprive the legislature of the quorum necessary to enact the congressional redistricting legislation was widely chronicled. *See* App. 62a-63a (summarizing efforts).